Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended	CC Docket No. 96-61

REPLY COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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The Personal Communications Industry Association ("PCIA")[1] hereby submits these reply comments in response to the comments filed in the above-captioned proceeding. As the record clearly demonstrates, the Commission should forbear from imposing *any* rate integration requirements on CMRS providers in light of the competitive conditions in the marketplace.

[1] PCIA is an international trade association created to represent the interests of the commercial and private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Messaging Alliance, the PCS Alliance, the Site Owners and Managers Association, the Association of Wireless Communications Engineers and Technicians, the Private Systems Users Alliance, the Mobile Wireless Communications Alliance. As the FCC-appointed frequency coordinator for the Industrial/Business Pool frequencies below 512 MHz, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligible and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

Nonetheless, if broad forbearance is denied, virtually all commenters in this proceeding agree that, at a minimum, the Commission should forbear from applying rate integration to wide-area calling plans, across affiliates, and to airtime and roaming charges. Such forbearance is consistent with Section 10 of the Communications Act, the legislative history of Section 254(g) and Commission precedent. Further, adoption of this approach will enhance competition among CMRS providers, lower prices, and foster the rapid deployment of new CMRS offerings into the marketplace.

I. INTRODUCTION AND SUMMARY

The overwhelming number of commenters in this proceeding agree that the Commission should utilize this proceeding to determine whether forbearance from rate integration obligations is warranted for CMRS providers. As these commenters demonstrated, enforcement of rate integration is unnecessary to ensure that CMRS rates are just and reasonable and not unreasonably discriminatory, to protect consumers, or to further the public interest.

Two parties, Hawaii and Alaska, have urged the agency to apply rate integration to the CMRS industry. Neither party, however, produced any evidence of discrimination against their residents by CMRS providers regarding CMRS rates or offerings. Further, neither party demonstrated that Congress intended for the Commission to extend its rate integration policies to the CMRS industry.

The bottom line is that competition in the CMRS industry has flourished in the absence of rate integration requirements. Moreover, nothing in Section 254(g) or its legislative history compels the Commission to extend rate integration to the CMRS industry. Imposing rate integration requirements on CMRS providers at this juncture would only undermine the tremendous growth and development of this industry without providing any significant public

interest benefit. Accordingly, PCIA reiterates its request that the Commission exercise its Section 10 authority and completely forbear from applying rate integration to CMRS providers. If broad forbearance is denied, PCIA requests, at a minimum, that the Commission forbear from applying rate integration to wide-area calling plans, across affiliates, or to airtime and roaming charges.

II. AS THE RECORD DEMONSTRATES, FORBEARANCE FROM APPLYING RATE INTEGRATION TO CMRS PROVIDERS IS WARRANTED IN LIGHT OF THE COMPETITIVE CONDITIONS IN THE CMRS MARKETPLACE.

A. The Majority Of Commenters In This Proceeding Support Forbearance From All Rate Integration Requirements For CMRS Providers.

Of the eighteen entities commenting in this proceeding, more than half urged the Commission to forbear completely from imposing rate integration on CMRS providers.[2] Each of these entities demonstrated that the Section 10 forbearance test is satisfied. First, commenters agree that rate integration is not necessary to ensure that CMRS rates are just and reasonable and not unreasonably discriminatory due to the robust competition in the CMRS marketplace. CMRS providers are competing fiercely to establish a market base and thus can ill-afford to charge unjust rates. Such vigorous competition will ensure that no CMRS provider is in a position to impose unjust or unreasonable rates.

Second, numerous commenters demonstrated that rate integration is not necessary to protect consumers. As BellSouth stated, "it is virtually impossible for a CMRS provider to

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[2] In addition to PCIA's comments, see Joint Comments of Aerial Communications, Inc. and United States Cellular Corp. at 2; AT&T Wireless Services, Inc. at 3-5; BellSouth at 6; Cellular Telecommunications Industry Association ("CTIA") at 2; Comnet Cellular at 2-5; Nextel Communications at 3-6; Omnipoint Communications at 2-4; and PrimeCo Personal Communications, Inc. at 3-6.

survive if it is not attentive to the needs of consumers. . . . Any CMRS provider that failed to treat its customers fairly would rapidly drive its dissatisfied customers to a competing CMRS system."[3] CMRS providers recognize that their customers will switch carriers if they are dissatisfied with their rates or services. Thus, CMRS providers are constantly deploying new and innovative CMRS offerings and pricing packages into the market to attract consumers. Moreover, commenters agree that Sections 201, 202, and 208 remain as prophylactic measures to safeguard consumer interests.

Third, the record demonstrates that forbearance will further the public interest by promoting competitive market conditions. As several commenters demonstrated, a failure to forbear would result in diminished consumer choice, lessened competition and higher prices.

PCIA therefore urges the Commission to utilize this opportunity to reexamine the record and consider whether rate integration is warranted for the CMRS industry. Commenters in this proceeding have produced compelling evidence that the competitive landscape of the CMRS industry is more than adequate to ensure just and reasonable rates in all markets, including insular markets, to protect consumers, and to promote the public interest. In light of this evidence, the Commission should forbear completely from applying rate integration to CMRS providers.

B. If Broad Forbearance Is Denied, Virtually All Commenters Support Forbearance From Rate Integration Requirements For Wide-Area Calling Plans, Across Affiliates, And For Airtime And Roaming Charges.

As the record demonstrates, broad forbearance is warranted. Nonetheless, if complete forbearance from rate integration requirements is denied, the overwhelming number of

[3] BellSouth Comments at 9.

commenters in this proceeding agree that, at a minimum, the Commission should forbear from applying rate integration to wide-area calling plans, across affiliates, and to airtime and roaming charges.

1. Wide-area Calling Plans

Virtually every commenter provided detailed evidence of the proliferation of wide-area calling plans in the absence of rate integration, thus demonstrating that rate integration is unnecessary for wide-area calling plans.[4] Indeed most commenters offer regional and, in some instances, national calling plans. As consumer demand for these plans escalates, CMRS providers will introduce more innovative calling plans into the market to differentiate themselves from competitors. In this fiercely competitive marketplace, no wireless provider is willing to risk losing customers by charging unreasonable rates or acting to the detriment of consumers.

Further, the record demonstrates that Hawaii and Alaska's concerns regarding discriminatory treatment are unfounded. Multiple CMRS providers are competing in Hawaii and Alaska,[5] offering these residents the same innovative CMRS offerings and pricing packages available on the mainland.[6] Indeed, Ameritech states that its CMRS rates in Hawaii are lower than those offered in most markets on the mainland.[7] Neither Hawaii nor Alaska produced any

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[4] America One at 6; Ameritech at 2-3; AT&T at 9-11; BellSouth at 14-15; CTIA at 3-4, 10-11; Comnet at 6-7; Nextel at 12; Omnipoint at 4-5; and PrimeCo at 17-18.

[5] There are multiple CMRS providers that offer national wide-area calling plans that include Hawaii and Alaska, including Omnipoint, SBC Wireless, Nextel, AT&T Wireless, Airtouch, Bell Atlantic Mobile, and Sprint PCS.

[6] *See* CTIA at 4-6 (citing article stating that competition in Alaska "mirrors increased competition in wireless markets in the Lower 48 and is likely to get even more heated in the next two years.)

[7] Ameritech at 3 n.5.

(Continued...)

evidence that their residents have been discriminated against by CMRS providers. It would be contrary to the public interest for the Commission to impose rate integration regulations on the "off chance" that some discrimination might develop.

Moreover, commenters agree that market conditions, coupled with Commission safeguards, are more than adequate to ensure that CMRS carriers charge just rates and act in the best interests of consumers. The Commission, therefore, should forbear from imposing rate integration on wide-area calling plans. Such forbearance will promote competitive market conditions by encouraging the continued deployment of innovative CMRS calling plans.

2. Across Affiliates

Likewise, most commenters agree with PCIA's position and support forbearance from rate integration across affiliates.[8] As the record demonstrates, ownership structures in the CMRS industry are unusually complex and often overlap. Requiring rate integration across affiliates would result in many providers having to charge identical, non-competitive rates for CMRS offerings. Indeed, AT&T contends that rate integration across affiliates could result in AT&T, BellSouth, Bell Atlantic, PrimeCo, and U S West having to unify their rates.[9]

CMRS providers need maximum flexibility to compete aggressively. Rate integration across affiliates would remove carriers' incentive to deploy creative CMRS offerings and pricing

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(...Continued)

[8] Aerial Communications and USC at 3-5; Ameritech at 4; AT&T at 12-13; Bell Atlantic Mobile ("BAM") at 3-4; BellSouth at 20; CTIA at 12; Comnet at 8; GTE at 18-21; Omnipoint at 6; PrimeCo at 11-12; and SBC at 6-8.

[9] AT&T at 12.

packages on a market-by-market basis, resulting in fewer choices and higher rates for consumers. Forbearance, however, would preserve competition, spur entry into the market, and drive down prices. PCIA thus urges the Commission to forbear from requiring rate integration across affiliates and allow the marketplace to continue dictating competitive prices for CMRS.

3. Airtime and Roaming

Like PCIA, many commenters take the position that airtime and roaming charges should not be subject to rate integration because they are not interexchange charges.[10] Nonetheless, should the agency find that Section 254(g) requirements are applicable to airtime and roaming charges, most commenters endorse forbearance for several reasons.[11] First, CMRS providers distinguish themselves based on their roaming footprint and airtime and roaming rates. Unreasonable rates would only drive customers away. Second, roaming charges generally do not vary depending on the local or interstate nature of the call. Extending rate integration to roaming charges would subject local calls to Section 254(g). Third, consumer demand for discounted airtime and roaming charges is extremely high, resulting in vigorous competition among CMRS providers. Market conditions, therefore, are sufficient to ensure that consumer interests are protected. Finally, forbearance would promote the public interest by giving CMRS providers the flexibility needed to price their services aggressively and offer innovative discounted airtime and roaming packages into the marketplace.

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[10] Aerial Communications and USC at 6; America One at 7-8; AT&T at 11-12; CTIA at 11; GTE at 9; and PrimeCo at 18-19.

[11] Aerial and USC at 2; AT&T at 3-4; BellSouth at 6-7 CTIA at 2-4; Comnet at 2-3; GTE at 11; Nextel at 8; Omnipoint at 6-7; and PrimeCo at 3.

The record is clear. Forbearance from all rate integration requirements is warranted for CMRS providers. Robust competition in the marketplace, coupled with Commission safeguards, are more than adequate to ensure that CMRS rates are just and reasonable, consumer interests are protected, and the public interest is served. Accordingly, the Commission should reconsider its decision to impose rate integration on the CMRS industry and exercise its forbearance authority under Section 10. If broad forbearance is denied, PCIA requests that, in the alternative, the agency forbear from applying rate integration to wide-area calling plans, across affiliates and to airtime and roaming charges.

III. THE LEGISLATIVE HISTORY OF SECTION 254(g) AND COMMISSION PRECEDENT SUPPORT THE AGENCY NOT APPLYING RATE INTEGRATION TO CMRS PROVIDERS.

A. As The Record Demonstrates, The Legislative History Of Section 254(G) Shows That The Section Was Intended Only To Codify The FCC's Existing Rate Integration Policies.

Several commenters demonstrated that Congress did not intend for the agency to extend its rate integration policies to the CMRS industry.[12] PCIA concurs and urges the Commission to reexamine its determination that rate integration is applicable to the CMRS industry based on the evidence in this proceeding and legislative history of Section 254(g).

Section 254(g) was not intended to apply to the CMRS industry, a fact that will immediately become evident if the agency closely examines the legislative history of Section 254(g). The Conference Report states that Section 254(g) "simply incorporates in the Communications Act the *existing* practice of geographic rate averaging and rate integration for interexchange, or long distance, telecommunications rates to ensure that rural customers continue

[12] *See* BAM at 12-13; Comnet at 2-3; Nextel at 3; and PrimeCo at 8-10.

to receive such service at rates that are comparable to those charged to urban customers."[13] The Commission's rate integration policies existing at the time the 1996 Act was adopted had never applied to the CMRS industry, but only to the wireline and domestic satellite industries. Indeed, before July 1997, the Commission had never considered applying such policies to the CMRS industry, despite its tremendous growth in 1995 and 1996. Further, the overriding purpose of Section 254(g) is to ensure that rural consumers are not discriminated against, a concern not specifically addressed by rate integration. The Commission's extension of rate integration requirements to the CMRS industry thus is a marked departure from its past practices.

B. The Commission's Reasons For Imposing Rate Integration In The Satellite And Wireline Contexts Are Not Applicable To The CMRS Context.

To understand why rate integration is unnecessary for the CMRS industry, the Commission must recall its underlying reasons for adopting rate integration in the first place. Rate integration was established in 1972 with the introduction of satellite technology for the provision of telecommunications service.[14] In examining whether to approve the use of satellite technology, the Commission considered the impact of such technology on insular markets.[15] Based on the record, the Commission determined that consumers in Alaska, Hawaii and Puerto Rico/Virgin Islands faced two problems: exorbitant rates between the U.S. mainland and offshore points, and inadequate and nonexistent communication services. The Commission

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[13] *Telecommunications Act of 1996*, Conference Report, 104th Cong.2d Sess., Report 104-458, at 129 (emphasis added).

[14] *Establishment of Domestic Communications Satellite Facilities by Non-Governmental Entities*, 35 F.C.C.2d 844 (1972) (*Domsat II*).

[15] *Id.* at 856-859; *see also Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities*, 34 FCC.2d 9, 68 (1972) (*Staff Recommendation*).

concluded that rates for telecommunications service between the mainland and Hawaii and Alaska were extremely high due to the physical characteristics of these offshore points, distance, and traffic volumes.[16] These factors combined to justify rate levels based on international rates, which were substantially higher than comparable domestic rates. Indeed, the Commission determined that "rates between Hawaii and the Western States [were] more than double mainland rates for service between the most remote locations in CONUS (and nearly as high as rates between Hawaii and Japan)."[17]

In addition, the Commission determined that the noncontiguous areas lacked telecommunications services available on the mainland. Specifically, Alaska's "present communication facilities were inadequate or nonexistent" and the State needed "comprehensive, low cost and reliable communications services."[18] Also, Hawaiian and Puerto Rican residents were charged extremely high rates for multiple services, including TV transmission, data and facsimile, which made these services virtually nonexistent on the islands.[19] Further, Hawaii did not receive wide area telephone service or direct distance dialing services.[20]

The Commission resolved that the deployment of satellite technology in the domestic telecommunications market would address these two problems. Satellite service is distance-insensitive. Therefore, the Commission concluded that use of satellite facilities for

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[16] *Domsat II* at 856.

[17] *Staff Recommendation* at 68.

[18] *Id.* at 67.

[19] *Id.* at 68, 71.

[20] *Id.* at 68.

communications between the mainland and offshore points would dramatically diminish distance as a justification for the historic high rates charged for service to offshore points.[21] Further, the agency reasoned that satellite facilities would enable carriers to provide message toll service and other specialized services to offshore points.[22] Accordingly, the Commission adopted a rate integration policy designed to "minimize the distinctions that have heretofore existed in rates and services to [offshore] points as compared to communications among the contiguous states..."[23] In a nutshell, the policy required carriers providing domestic satellite service between the mainland and Alaska, Hawaii and Puerto Rico/Virgin Islands to do so under a plan that would integrate their rates and services to the offshore points with rates and services on the mainland.[24] In 1976, the agency required carriers to implement rate and service integration for all services (particularly message toll, private line and specialized services) provided to or from Alaska, Hawaii, Puerto Rico and the Virgin Islands.[25]

Neither of the problems possibly justifying rate integration for the satellite and wireline industries is present for the CMRS industry. The record overwhelmingly demonstrates that rates for CMRS are very competitive. Indeed, in response to consumer demand and in light of vigorous competition in the CMRS marketplace, rates for CMRS packages have decreased

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[21] *Domsat II* at 856-57.

[22] *Id.* at 858.

[23] *Id.*

[24] *Id.* at 857.

[25] *Integration of Rates and Services,* Memorandum Opinion, Order and Authorization, 61 F.C.C.2d 380, 392 (1976).

dramatically in all CMRS markets, including noncontiguous points like Alaska and Hawaii. Further, CMRS rates for offshore points have never been based on international rates. Moreover, CMRS providers have deployed a variety of innovative CMRS offerings and packages throughout all fifty states, thus ensuring that consumers in noncontiguous areas are not deprived of any CMRS offerings.

Accordingly, there is no reason for imposing rate integration requirements on the CMRS industry. The marketplace has and will continue to be more than adequate to protect consumers in noncontiguous markets.

IV. PARTIES SUPPORTING RATE INTEGRATION HAVE OFFERED NO JUSTIFICATION FOR APPLYING THE POLICY TO CMRS PROVIDERS.

Alaska and Hawaii are the only two commenters supporting rate integration for the CMRS industry. Interestingly, neither party demonstrated in their comments that Section 254(g) compels the Commission to impose rate integration requirements on wireless providers. Further, neither carrier produced evidence that their residents have been discriminated against by CMRS providers in the services or rates offered. There in fact is no justification for imposing rate integration on CMRS providers, a fact amply supported by the evidence in this proceeding.

In it comments, Hawaii asserts that rate integration is necessary to preserve universal service, but does not elaborate upon *why* rate integration is necessary to ensure that universal service goals are met. PCIA, accordingly, cannot offer any meaningful comments in response. Nonetheless, to the extent any universal service concerns are raised, those concerns should be addressed in the universal service proceeding and any remedy fashioned should be targeted to eliminate the concern raised.

V. CONCLUSION

For the foregoing reasons, the Commission should forbear from imposing any rate integration requirements on CMRS providers. The record clearly establishes that market forces, coupled with current Commission safeguards, are sufficient to ensure that rates are just and reasonable and not unreasonably discriminatory, to protect consumers, and to serve the public interest. If, however, broad forbearance is denied, at a minimum, the Commission should forbear from applying rate integration to wide-area calling plans, across affiliates, or to airtime and roaming charges. Further, PCIA requests that the Commission refrain from considering any universal service issues in this proceeding, but address any such issues in the universal service proceedings.

Respectfully submitted,

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